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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 1177

DOUBLE EAGLE LUBRICANTS, INC.,
Appellant,

VERSUS

STATE OF TEXAS,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF THE STATE OF TEXAS

STATEMENT AS TO JURISDICTION

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March, 1966

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STATEMENT AS TO JURISDICTION

In compliance with Rules 13 and 15 of this Court, the Double Eagle Lubricants, Inc., Appellants, submit herewith this statement disclosing the basis with which the Supreme Court of the United States has jurisdiction on appeal to review the Final Judgment of the United States District Court for the Northern District of the State of Texas entered herein as set forth above.

OPINION BELOW

The opinion of the specially constituted District Court of three judges is reported in 248 F.Supp., page 515 and made a part hereof by reference.

BASIS OF JURISDICTION

I.

This action was brought by the Appellant against the Appellee to enjoin the State of Texas from interfering with the Appellant in the shipment and sale of its rerefined lubricating oils in the State of Texas on the grounds and for the reason that it was engaged in Interstate Commerce and protected by the Commerce Clause of the Constitution of the United States; and on the further ground that the Federal Trade Commission had assumed jurisdiction and required the labeling of the oil for shipment in Interstate Commerce and thereby preempted the field with reference to the labeling of oil shipped in Interstate Commerce.

II.

The jurisdiction of this Court to review on appeal a final judgment of the District Court is conferred by 28 U.S.C.A., Article 1252.

III.

Cases which sustain the jurisdiction of this Court to review on appeal the final judgment of the District Court are *King* v. *United States*, 344 U.S. 254, 73 S.Ct. 259, 97 L.Ed. 301; *Railroad Commission of Wisconsin* v. *Chicago, B. & Q. R.R. Co.*, 257 U.S. 563, 42 S.Ct. 232, 66 L.Ed. 371, 22 A.L.R. 1086; *Northern Pacific Railway Co.* v. *Montana*, 344 U.S. 905, 73 S.Ct. 329, 97 L.Ed. 699.

QUESTION PRESENTED

The question presented by this appeal is whether the District Court was justified in denying injunctive relief to

protect the Appellant in its Interstate business of transporting its oil into the State of Texas without labeling in accordance with the requirements of Article 1106(b), Vernons Annotated Penal Code of the State of Texas. The Federal Trade Commission had authority under 15 U.S.C.A. 45(a) to require labeling and it had so done but the United States District Court, required labeling in accordance with the Texas Statute, *supra*, in addition to the labeling as required by the Federal Trade Commission.

STATEMENT OF THE CASE

In this appeal from the final judgment of a specially constituted United States District Court of three judges, the record shows that the Double Eagle Lubricants, Inc., was engaged in rerefining previously used motor oil and that it was an Oklahoma Corporation, and transported and sold its oil in various states, including Texas; and that the Federal Trade Commission required it to label its oil by placing on the label letters showing the oil "Rerefined From Previously Used Oil." This was done, and the label was approved by the Federal Trade Commission. Later, the Federal Trade Commission decided that it would require the label placed on the same side or part of the can as the trade name Double Eagle appeared, which would, in effect, destroy the label. After a hearing before the Federal Trade Commission in Oklahoma City, the Trial Examiner dismissed the complaint of the Federal Trade Commission, holding that the label was amply sufficient and that the Federal Trade Commission could not and should not change its previous approval; and that the Double Eagle Lubri-

cants should not be required to do more than it had done in the labeling of its products.

An appeal was had by the Federal Trade Commission to the Federal Trade Commission; the matter submitted and argued in Washington, and the Federal Trade Commission said, in effect, that it would determine the matter not upon the evidence, but upon its examination of the cans or containers, and it set aside the order of the Federal Trade Commission's Hearing Examiner and required the labels to be placed on the part of the can containing the trade name and insignia of the Double Eagle which, in effect, destroyed the trade name and brand.

An appeal was had to the United States Court of Appeals for the Tenth Circuit, the case briefed and argued, and the Federal Trade Commission was affirmed, or its order was affirmed, and the matter is now pending on a Petition for Rehearing before the Court of Appeals Tenth Circuit.

The State of Texas requires more than the Federal Trade Commission required in that it required the labeling on the front and back panels of the can to be large lettering with the words "Reconditioned Motor Oil."

The United States District Court held that the State of Texas could make this requirement which would, in effect, destroy the Appellant's Interstate delivery of oil by reason of the fact that there would then be three labels on each can of motor oil, and the Appellant could not comply with both the Federal Trade Commission's requirement and the requirements of the State of Texas.

THE QUESTION PRESENTED IS SUBSTANTIAL

In the case at bar, if the judgment of the United States District Court is sustained, it means that the Appellant could not transport oil in Interstate Commerce because it is impossible to label the oil in accordance with the Federal Trade Commission's requirement and the requirements of the several states. Either the Federal Trade Commission had jurisdiction or the State of Texas had jurisdiction, and the Appellant could not comply with both.

a.

The Appellant shows that the District Court failed to properly apply the United States Constitution and failed to give proper consideration to the preemption, by virtue of the acts and jurisdiction of the Federal Trade Commission.

The question presented here is very substantial, in that it affects the operation of the Appellant in Interstate Commerce in the states adjacent to and surrounding the domicile of the Appellant; and, in effect, prevents the Appellant from exercising its constitutional rights to engage in Interstate Commerce.

b.

The District Court decided that the Appellant could, when it shipped oil to Texas, place on the can three labels, namely two, in accordance with the Texas Law and one, in accordance with the ruling of the Federal Trade Commission, although it was shown that the cans must be ordered far in advance in order that they may be properly

processed and lithographed, and that the label cannot be changed after the can is manufactured.

A similar case by this same Appellant was before the United States District Court of the State of New Mexico. A three-judge Court was convened composed of Judge Pickett, the late Judge Sam Bratton, United States Circuit Judge, and the late Judge Hatch, United States District Judge, and that Court enjoined the State of New Mexico from interfering with the Appellant in its sale and disposition of oil in New Mexico and it was based squarely on the same set of facts as are herein involved.

The case was not officially reported, but a copy of the opinion in this case was filed in the United States District Court for the Northern District of Texas.

CONCLUSION

The Appellant respectfully shows that this case presents for review a substantial question for the consideration of this Court, and one of great importance for the reason that it should be determined whether the State or the Federal Government must determine what kind of labeling is required for motor oil shipped in Interstate Commerce.

Respectfully submitted,

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